Supreme Court, U.S.
FILED
DEC - 3 1993
OFFICE OF THE CLERK

No. 93-732

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

MICHAEL K. WHETSTONE,

Petitioner,

v.

BETTY FOGLE WHETSTONE and JOSEPH KEELS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SOUTH CAROLINA SUPREME COURT

RESPONDENTS' BRIEF IN OPPOSITION

James R. Barber, III
TODD & BARBER, PC
3200 Devine Street
Post Office Box 1549
Columbia, SC 29202
Attorney for Respondent
Joseph Keels
(803) 779-4383

COUNSEL OF RECORD

BEST AVAILABLE COPY

QUESTION PRESENTED FOR REVIEW

Should the Supreme Court grant certiorari to review the unpublished opinion of the South Carolina Court of Appeals affirming the family court's order finding the Petitioner in civil and criminal contempt when there are no special or important issues to be decided, no federal questions addressed, and adequate state grounds for the decision?

TABLE OF CONTENTS

Question Presented..... i

Table of Contents..... ii

Table of Authorities..... iii

Statement of Case..... 2

Summary of Argument..... 3

Argument..... 4

1. The United States Supreme Court should deny certiorari because there are no special or important issues to decide in this case.

..... 4

2. The United States Supreme Court should deny certiorari because no federal questions were decided by the state court.

..... 5

3. The United States Supreme Court should deny certiorari since there are adequate state grounds for the opinion of the state court.

..... 6

Conclusion..... 10

TABLE OF AUTHORITIES

FEDERAL CASES

Erie R. Co. v. Purdy,
185 U.S. 148 (1902)..... 7

First Nat.Bank v. Estherville,
215 U.S. 341 (1910)..... 5

Louisville & N.R. Co. v. Woodford,
234 U.S. 46 (1914)..... 7

STATE CASES

State v. Gee, 262 S.C. 373,
204 S.E.2d 727 (1974)..... 7

State v. Newton, 274 S.C. 287,
262 S.E.2d 906 (1980)..... 7

No. 93-732

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

MICHAEL K. WHETSTONE,

Petitioner,

v.

BETTY FOGLE WHETSTONE and JOSEPH KEELS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SOUTH CAROLINA SUPREME COURT

RESPONDENTS' BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, JOSEPH KEELS, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by Petitioner MICHAEL K. WHETSTONE.

STATEMENT OF CASE

On September 11, 1990, the Honorable William M. Campbell, Family Court Judge for the Fifth Judicial Circuit in South Carolina, sentenced the Petitioner Michael K. Whetstone to 175 days imprisonment for criminal contempt and one year for civil contempt. (Appendix E & F)(All references to the Appendix are to the Appendix in the back of the Petition for Writ of Certiorari.) Mr. Whetstone appealed these sentences.

On December 29, 1992, the South Carolina Court of Appeals filed its opinion affirming Judge Campbell's sentences of contempt. (Appendix B.) Mr. Whetstone then petitioned for a rehearing which was denied on February 3, 1993. (Appendix C.) After that denial, Mr.

Whetstone petitioned the South Carolina Supreme Court for a Writ of Certiorari which the court denied on July 28, 1993. (Appendix A.) On August 9, 1993, the South Carolina Supreme Court issued its Remittitur in this case.

On October 21, 1993 the Petitioner filed a Petition for a Writ of Certiorari in the United States Supreme Court to review the unpublished opinion of the Court of Appeals.

SUMMARY OF ARGUMENT

The Supreme Court should deny certiorari since there are no special or important issues to be decided, no federal questions addressed, and there are adequate state grounds for the South Carolina Court of Appeals decision.

ARGUMENT

1. The United States Supreme Court should deny certiorari because there are no special or important issues to decide in this case.

None of the criteria set out in Rule 10.1 of the Rules of the Supreme Court of the United States are applicable. This case was not decided by the United States Court of Appeals but rather the opinion was rendered by the South Carolina Court of Appeals. The South Carolina Court of Appeals did not decide any federal questions in affirming the family court's sentences of contempt. There are no special or important questions for the Court to review. In short, the opinion which the Petitioner seeks the Court to review was of such little consequence that it was a per curiam opinion which was not

published. This Court should deny the Petition for Certiorari because there are no special or important issues to decide..

2. The United States Supreme Court should deny certiorari because no federal questions were decided by the state court.

In order for the Supreme Court to review a state court case, it must appear from the record that a federal question was actually decided by the state courts. First Nat.Bank v. Estherville, 215 U.S. 341, 346 (1910).

In affirming the contempt sentences of the family court, the South Carolina Court of Appeals did not decide any federal questions. The Constitutional provisions for which the Petitioner argues should apply were never presented to the trial court and were not decided by the

South Carolina Court of Appeals. The Petitioner raised these arguments for the first time on Appeal. (Appendix B, vi to xiii.) This Court should deny the Petition for Certiorari because no federal questions were decided by the state court.

3. The United States Supreme Court should deny certiorari since there are adequate state grounds for the opinion of the state court.

In affirming the contempt sentences of the trial court, the South Carolina Court of Appeals based its opinion exclusively on state law grounds. Petitioner's principal argument on certiorari is that he did not receive notice he was on trial for criminal contempt. (Petition for Certiorari, pp. 10-17). The South Carolina Court of

Appeals rejected this argument because it was not presented to the trial judge and was raised for the first time on appeal. (Appendix, vii)(citing State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974); State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980). This Court has held that the state court's denial of a claim because the Petitioner raised the federal issue for the first time on appeal is an adequate state ground precluding review. Louisville & N.R. Co. v. Woodford, 234 U.S. 46 (1914); Erie R. Co. v. Purdy, 185 U.S. 148 (1902).

The Petitioner also argues that the trial court's temporary order did not advise him how he could purge his civil contempt. In disposing of this argument, the South Carolina Court of Appeals noted

there was no prejudice to the Petitioner since he was also serving a concurrent sentence for criminal contempt. (Appendix, ix-x.) Moreover, the trial court's initial order expressly stated a more detailed order would follow and the trial court issued a detailed order which informed the Petitioner how he could purge the civil contempt. (Appendix E & F).

Next, the Petitioner argues there was insufficient evidence of his criminal intent. The South Carolina Court of Appeals noted that the appropriate standard for review in this state was abuse of discretion and found no abuse. The South Carolina Court of Appeals then cited evidence in the record of the Petitioner's willful disobedience to previous court orders. (Appendix B,

viii-ix).

Finally, the Petitioner argues the trial court's method for purging the civil contempt, clearing title to properties he attempted to make unmarketable, was impossible since the trial court declared the Petitioner's conveyances of these properties void. The South Carolina Court of Appeals cited the Petitioner's own testimony that he could file documents which would help clear title and that such action would aid title searchers. (Appendix B, xi-xiii.)

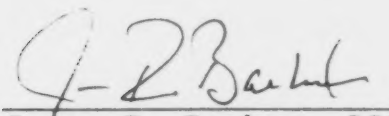
As the preceding paragraphs indicate, the South Carolina Court of Appeals decided its opinion exclusively based upon South Carolina law and did not discuss or decide any federal law; therefore, this Court should deny the Petition for

Certiorari since the state court's opinion is based exclusively on adequate state grounds.

CONCLUSION

For the reasons set forth above, the Supreme Court should deny certiorari since there are no special or important issues to be decided, no federal questions addressed, and there are adequate state grounds for the state court's decision.

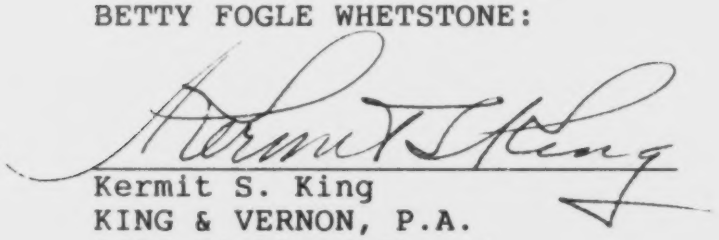
Respectfully Submitted,



James R. Barber, III
TODD & BARBER, PC
3200 Devine Street, Suite 101
Post Office Box 1549
Columbia, SC 29202
Attorney for Respondent
Joseph Keels
(803) 779-4383

COUNSEL OF RECORD

I JOIN IN THIS BRIEF IN OPPOSITION ON BEHALF OF BETTY FOGLE WHETSTONE:



Kermit S. King
KING & VERNON, P.A.
1426 Richland Street
Post Office Box 7667
Columbia, SC 29202
Attorney for Respondent
Betty Fogle Whetstone
(803) 779-3090